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No._____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

ESTATE OF DAN B. CULL, Deceased,
WILLIAM J. CULL, Administrator,
and
CONNIE E. CULL, Surviving Spouse,
Petitioners,

versus

COMMISSIONER of INTERNAL REVENUE,
Respondent,

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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January 17, 1985

Appendix

Table of Contents

United States Court of Appeals for the Sixth Circuit, Opinion	1
Court of Appeals, Judgment	9
Tax Court Memorandum Findings of Fact and Opinion	11
United States Tax Court Decision	23
Respondent's Computation for Entry of Decision	25
Relevant Statutes and Rules	29

RECOMMENDED FOR FULL TEXT PUBLICATION
See, Sixth Circuit Rule 24

No. 83-1601

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

ESTATE OF DAN B. CULL, DECEASED, WILLIAM J. CULL, ADMINISTRATOR, and CONNIE E. CULL, SURVIVING SPOUSE, *Petitioners-Appellees*, v. COMMISSIONER OF INTERNAL REVENUE, *Respondent-Appellant*.	ON APPEAL from the United States Tax Court.

Decided and Filed October 23, 1984

Before: KEITH and JONES, Circuit Judges, and BALLANTINE, District Judge.*

KEITH, Circuit Judge. This is an appeal by the Commissioner of Internal Revenue, pursuant to 26 U.S.C. § 7482, from a decision of the United States Tax Court. The issue presented is whether a full-time gambler for his own account can be engaged in a "trade or business" within the meaning of 26

* Honorable Thomas A. Ballantine, Jr., United States District Judge for the Western District of Kentucky, sitting by designation.

U.S.C. § 62(1) for the purpose of determining adjusted gross income[1] even though he offers no goods or services to others. Petitioner-appellee contended that Dan Cull could deduct his net gambling losses for purposes of arriving at his adjusted gross income subject to tax, regardless of whether these losses exceeded his winnings. In so doing, Mr. Cull could avoid a minimum tax that would otherwise be due on excess itemized deductions pursuant to 26 U.S.C. § 56(a).[2] The tax court held in favor of the estate of Dan B. Cull. We reverse.

I.
FACTS

During 1977 the decedent, Dan B. Cull, was employed full time as a pari-mutuel clerk at various racetracks in northern Ohio. Cull was a habitual gambler who placed wagers almost daily. He and his wife, Connie E. Cull, received income totalling $17,670.67 during 1977, from sources other than Mr. Cull's gambling winnings.

---

[1] Title 26 U.S.C. § 62(1) provides:

> "Sec. 62. **Adjusted Gross Income Defined.**
> "For purposes of this subtitle, the term 'adjusted gross income' means, in the case of an individual, gross income minus the following deductions:
>
> (1) **Trade and business deductions.** — The deductions allowed by this chapter (other than by part VII of this subchapter) which are attributable to a trade or business carried on by the taxpayer, if such trade or business does not consist of the performance of services by the taxpayer as an employee."

[2] Title 26 U.S.C. § 56 provides:

> "Sec. 56 **Imposition of Tax.**
> (a) **General Rule.** — In addition to the other taxes imposed by this chapter, there is hereby imposed for each taxable year, with respect to the income of every person, a tax equal to 15 percent of the amount by which the sum of the items of tax preference exceeds the greater of —
>
> (1) $10,000, or
>
> (2) the regular tax deduction for the taxable year (as determined under subsection (c))."

When Mr. Cull was not working as a pari-mutuel clerk, he gathered information for the purpose of placing bets. He often arrived at the race track as early as 6:00 a.m. in order to question owners, trainers and jockeys. Near the end of 1977, he took a number of days off from his regular clerk job in order to devote his entire day to betting.

Mr. Cull only gambled with his own money on his own account. He did not place bets on behalf of others or quote odds on any race in 1977.

Mr. Cull maintained a detailed ledger in which he recorded the amount wagered on each race. In the ledger, the "won" column listed the amounts by which the receipts from a particular race exceeded the amount of the wagers on that race. The "loss" column listed the amounts by which the wagers on a particular race exceeded the receipts from that race. The ledger tabulated winnings and losses on a daily basis, ultimately arriving at a daily net won-or-loss figure. Computed on this basis, Mr. Cull had $56,694.40 of net winnings on winning days and $74,926.90 of net losses on losing days. Addition of all entries in the "won" column results in a total amount of $130,411. These winnings were more than offset by gambling losses for the year.

Dan and Connie Cull were married throughout 1977. They filed a joint federal income tax return for that year and reported $47,908.10 of gambling winnings as wages or other compensation and 47,908.10 of gambling losses as an itemized deduction.

They subsequently filed an amended 1977 return in which they reported the $47,908.10 of gambling winnings as gross receipts of a sole proprietorship and deducted the same amount as gambling losses. Mr. Cull died in 1979.

The Commissioner determined that Mr. Cull received total gambling winnings of $130,411 and that only $130,411 of the aforementioned gambling losses were deductible. The Commissioner further determined that the deduction for gambling losses was not attributable to a trade or business. The de-

duction was therefore not allowable in determining adjusted gross income under Section 62(1). Rather, it was an itemized deduction. A portion of those deductions was treated as items of tax preference subject to the minimum tax imposed by Section 56 of the Internal Revenue Code. Accordingly, the Commissioner asserted a deficiency in federal income tax against the estate of Dan B. Cull for the taxable year 1977 in the amount of $6,286.81. The estate, through its administrator, William J. Cull, and the surviving spouse, Connie E. Cull, filed a petition in the tax court for redetermination of the deficiency.

The estate argued that Mr. Cull was carrying on a trade or business as a professional gambler, and that therefore his gambling losses did not give rise to items of tax preference subject to the minimum tax. The estate also argued that the Commissioner had incorrectly determined the amount of Mr. Cull's 1977 gambling losses, so that even if Mr. Cull were not carrying on a trade or business, the Commissioner had incorrectly determined the amount of the minimum tax.

The Commissioner relied on *Gentile* v. *Commissioner*, 65 T.C. 1 (1975), which defined "carrying on a trade or business" as holding oneself out to others as engaged in the selling of goods or services. In *Gentile*, the court held that a gambler betting solely on his own account was not carrying on a trade or business. While the instant case was pending, the tax court, in *Ditunno* v. *Commissioner*, 80 T.C. 362 (1983), overruled *Gentile* and rejected the "trade or business" standard in favor of a "facts and circumstances" test. In *Ditunno*, which also involved the application of the minimum tax to a gambler, the court concluded that the taxpayer was an active gambler in the trade or business of gambling.

In the instant case, the tax court found that Mr. Cull was an active, professional gambler who devoted substantial time and energy to his gambling activities and that under *Ditunno*, he was in a trade or business. Therefore, Mr. Cull's gambling losses were deducted in determining gross income under

Section 62(1), he had no items of tax preference, and he was not subject to the minimum tax. Accordingly on June 1, 1983, the tax court entered a decision that determined a deficiency of only $8.00. Since the tax court held that Mr. Cull's gambling losses were not items of tax preference, it did not reach the issue of whether the Commissioner had properly determined the amount of those losses. This appeal followed.

II.

DISCUSSION

An accurate definition of the phrase "carrying on a trade or business" is essential to the disposition of this case. Because neither "trade" nor "business" is defined in the Internal Revenue Code or in the Treasury Regulations, defining the phrase has been left to the judiciary. In *Deputy* v. *duPont*, 308 U.S. 488 (1940), the Supreme Court held that costs resulting from a short sale of stock by shareholders to raise capital for a financially troubled corporation that was legally unable to act were not deductible in computing the shareholders' income. The Court reached this result because the costs resulted from the taxpayers' business rather than that of the corporation and were neither "ordinary" nor "necessary" business expenses. In concurring with the result, Justice Frankfurter defined trade or business in order to show that the stockholders' activities did not fit within the meaning of the term: "carrying on any trade or business, within the contemplation of § 23(a) [precursor to Section 62(1)], involves holding one's self out to others as engaged in the selling of goods or services. This the taxpayer did not do." *Id.* at 499. (Franfurter, J., concurring).

The continuing importance of this definition is demonstrated by an examination of the leading relevant cases. In *Gentile* v. *Commissioner*, 65 T.C. 1 (1975), the court decided that the "[p]etitioner's gambling winnings were not derived from the carrying on of any trade or business" because, as petitioner

asserted, "he neither provided nor held himself out as a provider of any goods or services to any other person." *Id.* at 3. The requirement of holding one's self out to others has been applied by the circuit courts in other similar circumstances. In a leading case involving the characterization of personal investing, the Second Circuit held that "By the common speech of men, a person who does nothing beyond looking after his own investments and receiving the income from them is not conducting a trade or business." *Higgins* v. *Commissioner*, 111 F.2d 795, 796 (2d Cir. 1940), *aff'd*, 312 U.S. 212 (1941). The unifying principle is that involvement in any profitable activity using only personal funds for one's private benefit, without offering the services to others, does not constitute participation in a trade or business.

Appellees assert that in affirming *Higgins*, the Supreme Court set forth a "facts and circumstances" test to determine if activities constitute "carrying on a business." In *Higgins*, the Court stated:

> To determine whether the activities of a taxpayer are "carrying on a business" requires an examination of the facts in each case. As the [Second] Circuit Court of Appeals observed [below], all expenses of every business transaction are not deductible. Only those are deductible which relate to carrying on a business. The Bureau of Internal Revenue has this duty of determining what is carrying on a business, subject to reexamination of the facts by the Board of Tax Appeals and ultimately to review on the law by the courts on which jurisdiction is conferred.

Higgins v. *Commissioner*, 312 U.S. at 217-18.

This language, which appellees believe states a legal standard, more appropriately establishes factors to be considered before the application of a legal standard and is not an alternative to Justice Frankfurter's holding out test. It is not

enough to say that whether a person is engaged in a trade or business is a question of facts or circumstances. The crucial question is *what* facts or circumstances are necessary to the determination that a taxpayer is engaged in a trade or business. That is to say, the 'facts and circumstances' approach describes a predicate for application of a legal test rather than a legal standard. *Gajewski* v. *Commissioner*, 723 F.2d 1062, 1066 (2d Cir. 1983).

This being the case, the two standards are clearly in concert. *Higgins* stands for the proposition that determining whether one is involved in a trade or business is a question of fact while the Frankfurter concurrence in *duPont*, sets forth a minimum standard for establishing taxpayers' involvement in a trade or business. The following courts have established a number of other facts to be considered in making these determinations. *See Stanton* v. *Commissioner*, 399 F.2d 326, 329-30 (5th Cir. 1968); *McDowell* v. *Ribicoff*, 292 F.2d 174, 178 (3d Cir.), *cert. denied*, 368 U.S. 919, (1961) (considering whether or not taxpayer's efforts were marked by continuity and regularity essential to involvement in a trade or business); *Daily Journal Co.* v. *Commissioner*, 135 F.2d 687, 688 (9th Cir. 1943); *Bassenvey* v. *Commissioner*, 379 F.2d 252, 255-56 (2d Cir.), *cert. denied*, 389 U.S. 931, 88 S.Ct. 193, 19 L.Ed. 2d 183 (1967) (considering whether or not the taxpayer intends to make a profit).

The "facts and circumstances" test was cited in the recent tax court case that overruled *Gentile*, thus making the "holding out" test inapplicable to cases such as this one. *Ditunno* v. *Commissioner*, 80 T.C. 362 (1983). The *Ditunno* court found Justice Frankfurter's "holding out" test too restrictive and inappropriate because the majority in *duPont* issued its ruling without considering the meaning of "trade or business." The *Ditunno* court ignores the impact of the definition in Justice Frankfurter's concurrence. In determining if one is carrying on a "trade or business," the most basic requirement has remained that of "holding one's self out to others as engaged in the

selling of goods or services." *Deputy* v. *duPont*, 308 U.S. at 499. The continued vitality and importance of this view has been acknowledged in a number of circumstances. *See, e.g., Snow* v. *Commissioner*, 416 U.S. 500 (1974) (using Justice Frankfurter's definition of 'trade or business' as the standard for comparing Section 162 with Section 174). Similarly, the Second Circuit considers the "goods or services" requirement to be part of the law. *Grosswald* v. *Schweiker*, 653 F.2d 58 (2d Cir. 1981). The importance of the "goods and services" test was also stated in the dissent to *Ditunno*, where Chief Judge Tannenwald stated: "I know of no case (and my research has not produced any) where a taxpayer did not deal with third parties, i.e., hold himself out, and was nevertheless found to be carrying on a trade or business." *Ditunno* v. *Commissioner*, 80 T.C. at 374; *see also Gajeyski* v. *Commissioner*, 723 F.2d at 1067 (interpreting *Higgins* as not implying that a person who fails to publicly offer goods or services could be carrying on a trade or business). The importance of the test is such that the Second Circuit has called it the minimum standard for determining whether a taxpayer is engaged in a trade or business. *Gajewski* v. *Commissioner*, 723 F.2d at 1066.

Given the above discussion, it is clear that Dan Cull's failure to hold himself out to others as a gambler precluded him from being engaged in a trade or business within the meaning of Section 62(1). Accordingly, the ruling of the tax court is hereby reversed and the previous findings of the Commissioner that Mr. Cull's gambling losses were items of tax preference subject to tax preference is restored. The case is also remanded for trial on the issue of whether the Commissioner properly determined the amount of gambling losses.

UNITED STATES COURT OF APPEALS

For The Sixth Circuit

No. 83-1601

ESTATE OF DAN B. CULL, Deceased, WILLIAM J. CULL, Administrator, AND CONNIE E. CULL, Suriving Spouse

Petitioners-Appellees,

vs.

COMMISSIONER of INTERNAL REVENUE,

Respondent-Appellant.

Before: KEITH and JONES, Circuit Judges; and BALLANTINE, District Judge

J U D G M E N T

ON APPEAL from a decision of the Tax Court of the United States.

THIS CAUSE came on to be heard on the transcript of record from the said Tax Court and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this court that the decision of the said Tax Court in this cause be and the same is hereby reversed and the case is remanded consistent with this opinion.

Each party is to bear its own costs on Appeal.

ENTERED BY ORDER OF THE COURT
John P. Hehman, Clerk

/s/ John P. Hehman
Clerk

Issued as Mandate: November 14, 1984

A True Copy

COSTS: NONE

Attest:

Filing fee. . . .$

Printing . . . .$

Total . . . .$

/s/
Deputy Clerk

T. C. Memo. 1983-80

UNITED STATES TAX COURT

ESTATE OF DAN B. CULL, Deceased, WILLIAM J. CULL, Administrator, and CONNIE E. CULL, Surviving Spouse, PETITIONERS v. COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 7608-80 Filed 2/8/83.

During 1977, decedent was employed as a pari-mutuel clerk at various racetracks in northern Ohio. He also was a habitual gambler who placed wagers almost daily in 1977. Petitioners elicited uncontradicted testimony that decedent was a "professional gambler" who devoted substantial time and energy to his gambling activities. Held, decedent was in the separate trade or business of gambling in 1977. Accordingly, the gambling losses incurred by

him and used to offset gambling winnings do not constitute items of tax preference. Ditunno v. Commissioner, 80 T.C. _____(Feb. 7, 1983), followed.

Gerald A. Berk, Thomas J. Escovar and Benjamin F. Farah, for the petitioners.

Kristine A. Roth, for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

STERRETT, Judge: By notice of deficiency dated March 6, 1980, respondent determined a deficiency in petitioners' Federal income tax for the taxable year 1977 in the amount of $6,286.81. After concessions, the issues for decision are (1) whether Dan B. Cull was in the trade or business of professional gambling; and, if not, (2) whether respondent correctly determined the amount of minimum tax attributable to the excess itemized deductions generated by Mr. Cull's gambling activities.

FINDINGS OF FACT

Some of the facts have been stipulated and are so found. The stipulation of facts and exhibits attached thereto are incorporated herein by this reference.

William J. Cull, administrator for the Estate of Dan B. Cull, a petitioner

herein, resided in Madison, Ohio at the time of filing the petition herein. Petitioner, Connie Cull, surviving spouse of Dan B. Cull, resided in Aurora, Ohio at the time of filing the petition herein. Decedent, Dan B. Cull (hereinafter decedent) and petitioner Connie Cull were married during 1977 and they filed a joint Federal income tax return for that year with the Internal Revenue Service Center, Cincinnati, Ohio. An amended return was filed with the Cincinnati Service Center on May 25, 1978, on which the Culls reported as gross receipts of a sole proprietorship gambling winnings in the amount of $47,908.10, which previously had been reported as wages or salary or other compensation on their original Form 1040. Petitioners deducted the same amount as gambling losses.

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During 1977, decedent was employed full time as a pari-mutuel clerk at various racetracks in northern Ohio. He and his wife received income other than from Mr. Cull's gambling in the year 1977 from the following sources and in the following amounts:

Source of payments	Amount
Grandview Raceway	$ 3,616.00
Painesville Raceway	3,168.00
Summit Racing Club, Inc.	2,044.00
Cranwood Racing Club, Inc.	1,207.00
Thistledown Racing Club, Inc.	2,341.00
Randall Racing Club, Inc.	2,982.00
Northfield Park Associates	5,605.00
Interest income	101.96
Dividends	27.09
Income from rental property	(2,278.33)
Farm Income	(743.05)
Sale of Horse	(400.00)
Total	$ 17,670.67

Decedent was a habitual gambler who placed wagers almost daily in 1977. When he was not working at his job, he gathered information for purposes of placing bets. He often arrived at the racetrack as early as 6 o'clock in the morning in order to question owners, trainers and jockeys. Near the end of the year, decedent took a number of days off from his regular job as a pari-mutuel clerk in order to devote his entire day to betting for his own account. Decedent only bet with his own money; he did not place bets on behalf of others or quote odds for any race during 1977.

Decedent maintained a detailed ledger in which he recorded the amount wagered on each race. In the ledger, the column "won" listed the amounts by which the receipts for each race exceeded the

amount of the wagers for each race. The entries in the column marked "lost" were the amounts by which the wagers for a particular race exceeded the receipts of that race. The ledger tabulated winnings and losses on a per-day basis, ultimately arriving at a daily net won-or-loss figure. Computed on this basis, decedent had $56,694.40 of net winnings on winning days and $74,926.90 of net losses on losing days. Respondent, in his notice of deficiency, calculated total winnings by adding all entries in the "won" column of decedent's ledger to arrive at a total amount of $130,411. These winnings were more than offset by gambling losses for the year.

OPINION

The first issue we address is whether decedent was engaged in the trade or business of gambling during the year in question. If so, the gambling losses incurred by him and used to offset gambling winnings would not constitute items of tax preference.[1] If not, the utilized gambling losses would constitute items of tax preference.[2]

---

[1]As the law stood in 1977, Sec. 57(a)(1), I.R.C. 1954, provided that "adjusted itemized deductions" constituted items of tax preference. The phrase "adjusted itemized deductions" was defined as the amount by which the sum of the deductions for the taxable year, with certain exceptions, exceeded 60 percent of the taxpayer's adjusted gross income for the taxable year.

Sec. 57(b)(1). Excepted from the deductions added into this formula were "deductions allowable in arriving at adjusted gross income". Sec. 57(b)(1)(A). Sec. 62 (1) provides that deduc-

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tions attributable to a trade or business carried on by the taxpayer constitute deductions allowable in reaching adjusted gross income. Thus, if petitioner was in the trade or business of gambling, his gambling losses would not constitute items of tax preference.

[2]This is because such losses are deductible pursuant to Sec. 165(d), and, therefore, because the resultant deductions were not excluded from the definition of adjusted itemized deductions under Sec. 57(b)(1), they constituted items of tax preference within Sec. 57(a)(1).

For taxable years beginning after December 31, 1982, individuals are no longer subject to the minimum tax under Sec. 56 though they are subject to the alternative minimum tax imposed pursuant to Sec. 55. However, under the newly expanded version of Sec. 55, deductible gambling losses do not have the effect of increasing an individual's alternative minimum tax. See Sec. 55(b)(1)(B) and sec. 55(e)(1)(A).

In Gentile v. Commissioner, 65 T.C. 1 (1975), we similarly were faced with the issue of whether a taxpayer's gambling activities constituted a trade or business. We held that one must hold oneself out to others as offering goods or services in order to be engaged in a trade or business. Gentile v. Commissioner, supra at 5-6.

Petitioners request us to reexamine our position in Gentile. Respondent, on the other hand, relies entirely upon the proposition that a gambler who does not offer goods or services to others is not in the trade of business or gambling.

In Ditunno v. Commissioner, 80 T.C. ____(Feb. 7, 1983), recently decided by this Court, we held that the goods or services test applied in Gentile was overly restrictive, and that a proper analysis must rest on the facts and

circumstances of each case. In determining whether a gambler who bet solely on his own account was in a trade or business, we looked to the character of his gambling activities, finding that they were sufficiently "active" to elevate them to trade or business status.

On brief, respondent relies upon the continuing vitality of the goods or services test as applied in Gentile v. Commissioner, supra. He did not refute petitioners' contention that decedent was a "professional gambler" who devoted substantial time and energy to his gambling activities. In effect, respondent made no attempt to contradict the testimony of petitioners' witness that decedent was an "active" gambler. Accordingly, based upon this uncontradicted testimony, we hold that decedent

was in the separate trade or business of gambling during 1977.[3] Due to our holding, we need not reach the second issue in this case.

To reflect the foregoing,

Decision will be entered under Rule 155.

---

[3] A taxpayer may be engaged in more than one trade or business. See Curphey v. Commissioner, 73 T.C. 766, 775-776 (1980), on appeal (9th Cir., November 24, 1980).

UNITED STATES TAX COURT

ESTATE OF DAN B. CULL, Deceased WILLIAM J. CULL, Administrator, and CONNIE E. CULL, Surviving Spouse	)	
Petitioners,	)	Docket No.
vs.	)	7608-80
COMMISSIONER OF INTERNAL REVENUE	)	
Respondent	)	

DECISION

Pursuant to the opinion of the Court filed February 8, 1983, and incorporating herein the facts recited in the respondent's computation as the findings of the Court, it is

ORDERED and DECIDED: That there is a deficiency in income tax due from the petitioners for the taxable year 1977 in the amount of $8.00.

Judge

Entered: June 1, 1983

* * * * * *

UNITED STATES TAX COURT

ESTATE OF DAN B. CULL, Deceased WILLIAM J. CULL, Administrator, and CONNIE E. CULL, Surviving Spouse	)	
Petitioners	)	Docket No.
vs.	)	7608-80
COMMISSIONER OF INTERNAL REVENUE	)	
Respondent	)	

RESPONDENT'S COMPUTATION FOR ENTRY OF DECISION

The attached computation is submitted on behalf of the respondent, in compliance with the Court's opinion determining the issues in this case, together with a proposed decision which is being lodged concurrently with said computation.

This computation is submitted without prejudice to respondent's rights to contest the correctness of the decision entered herein by the Court.

KENNETH W. GIDEON
Chief Counsel
Internal Revenue Service

_____ By: _____
Date JACK E. PRESTRUD
Assistant District
Counsel

OF COUNSEL:

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1404 East Ninth Street
Cleveland, Ohio 44114
Tel. No. 216-522-3380/FTS 293-3380

Docket No. 7608-80

Without prejudice to the right of appeal, it is agreed that the attached computation is in accordance with the opinion of the Tax Court in the above-entitled case.

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Date	/s/ Gerald A. Berk GERALD A. BERK
	THOMAS J. ESCOVAR Counsel for Petitioners Steuer, Escovar & Berk Co., L.P.A. The Illuminating Building 55 Public Square, 18 Floor Cleveland, Ohio 44114 Tel. No. (216) 771-8121

COMPUTATION STATEMENT

In re: Estate of Dan B. Cull, Deceased
William J. Cull, Administrator
6233 Shore Drive
Madison, Ohio 44057

and

Connie E. Cull, Surviving Spouse
236 Eldridge Road
Aurora, Ohio 44202

Docket No. 7608-80

Income Tax

Year	Deficiency
1977	$8.00

The details supporting the above computation are set forth on attached page 2.

Internal Revenue Code of 1954 (26 U.S.C.):

SEC. 56. IMPOSITION OF TAX.

(a) General Rule. - In addition to the other taxes imposed by this chapter, there is hereby imposed for each taxable year, with respect to the income of every person, a tax equal to 15 percent of the amount by which the sum of the items of tax preference exceeds the greater of --

(1) $10,000.00 or

(2) the regular tax deduction for the taxable year (as determined under subsection (c)).

SEC. 57. ITEMS OF TAX PREFERENCE.

(a) IN GENERAL. - For purposes of this part the items of tax preference are --

(1) Adjusted itemized deductions. In the case of an individual, an amount equal to the adjusted itemized deductions for the taxable year (as determined under subsection (b)).

(b) ADJUSTED ITEMIZED DEDUCTIONS. --

(1) In general. -- For purposes of paragraph (1) of subsection (a), the amount of the adjusted itemized deductions for any taxable year is the amount by which the sum of the deductions for the taxable year other than --

(A) deductions allowable in arriving at adjusted gross income,

(B) the deduction for personal exemptions provided by section 151,

(C) the deduction for medical, dental, etc., expenses provided by section 213,

(D) the deduction allowable under section 691 (c), exceeds 60 percent (but does not exceed 100 percent) of the taxpayer's adjusted gross income for the taxable year.

SEC. 62. ADJUSTED GROSS INCOME DEFINED.

For the purposes of this subtitle, the term "adjusted gross income" means, in the case of an individual, gross income minus the following deductions:

(1) Trade and business deductions. -- The deductions allowed by this Chapter (other than by part VII of this subchapter) which are attributable to a trade or business carried on by the taxpayer, if such trade or business does not consist of the performance of services by the taxpayer as an employee.

SEC. 162. TRADE OR BUSINESS EXPENSES.

(a) IN GENERAL. -- There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business . . .

SEC. 174. RESEARCH AND EXPERIMENTAL EXPENDITURES.

(a) TREATMENT AS EXPENSES. --

(1) In General. -- A taxpayer may treat research or experimental expenditures which are paid or incurred by him during the taxable year in connection with his trade or business as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction.

SEC. 6213. RESTRICTIONS APPLICABLE TO DEFICIENCIES; PETITION TO TAX COURT.

(a) TIME FOR FILING PETITION AND RESTRICTION ON ASSESSMENT. - Within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the notice of deficiency authorized in section 6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court for a redetermination of the deficieny. Except as otherwise provided in section 6851 or section 6861 no assessment of a deficiency in respect of any tax imposed by subtitle A, or B, chapter 41, 42, 43, 44, or 45 and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor

until the expiration of such 90-day or 150-day period, as the case may be, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 7421(a), the making of such assessment or the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court.

SEC. 7483. NOTICE OF APPEAL.

Review of a decision of the Tax Court shall be obtained by filing a notice of appeal with the clerk of the Tax Court within 90 days after the decision of the Tax Court is entered. If a timely notice of appeal is filed by one party, any other party may take an appeal by filing a notice of appeal within 120 days after the decision of the Tax Court is entered.

28 U.S.C. SEC. 1254. COURTS OF APPEALS; CERTIORARI; APPEAL; CERTIFIED QUESTIONS.

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any part to any civil or criminal case, before or after rendition of judgment or decree.

RULE 13. REVIEW OF DECISIONS OF THE TAX COURT

(a) HOW OBTAINED; TIME FOR FILING NOTICE OF APPEAL. Review of a decision of the United States Tax Court shall be obtained by filing a notice of appeal with the clerk of the Tax Court within 90 days after the decision of the Tax Court is entered. If a timely notice of appeal is filed by one party, any other party may take an appeal by filing a notice of appeal within 120 days after the decision of the Tax Court is entered.

The running of the time for appeal is terminated as to all parties by a timely motion to vacate or revise a decision made pursuant to the Rules of Practice of the Tax Court. The full time for appeal commences to run and is to be computed from the entry of an order disposing of such motion, or from the entry

of decision, whichever is later.

(b) NOTICE OF APPEAL - HOW FILED. The notice of appeal may be filed by deposit in the office of the clerk of the Tax Court in the District of Columbia or by mail addressed to the clerk. If a notice is delivered to the clerk by mail and is received after expiration of the last day allowed for filing, the postmark date shall be deemed to be the date of delivery, subject to the provisions of Sec. 7502 of the Internal Revenue Code of 1954, as amended, and the regulations promulgated pursuant thereto.